Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	
Technologies Transitions Policy Task Force	GN Docket No. 13-5

REPLY COMMENTS OF THE AMERICAN CABLE ASSOCIATION ON PUBLIC NOTICE DA 13-1016 ON POTENTIAL TRIALS

The American Cable Association[1] ("ACA") respectfully submits these reply comments filed in response to the Public Notice issued by the Technology Transitions Policy Task Force ("Task Force") seeking comment on potential trials.[2] In its initial comments, ACA focused on the proposed VoIP interconnection trial, and, to the extent the AT&T trial proposal[3] involves similar issues, on that proposal as well.[4] ACA commented that there was no real value in conducting either of those trials since they would do nothing to prove the market power of the incumbent LECs ("ILECs") – particularly the larger ILECs – has abated and technical or logistical questions involving VoIP interconnection are not significant issues. Instead, ACA urged the Commission to address immediately the important and well-documented concern that,

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1 ACA represents over 800 small and mid-sized cable television operators, most of whom also offer voice services and broadband Internet access services. In offering voice services, ACA members that are local exchange carriers ("LECs") may use TDM technology. ACA's members that are not LECs use managed VoIP service to ensure quality of service.

2 *See Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, Public Notice, DA 13-1016, (rel. May 10, 2013) ("Public Notice").

3 *See* AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353 (filed Nov. 7, 2012).

4 *See* Comments of the American Cable Association, GN Docket No. 13-5 (July 8, 2013).

because of their market power, the larger ILECs are either refusing to engage in IP-IP interconnection for VoIP traffic or insisting upon unreasonable terms and conditions to exchange VoIP traffic. These actions not only inhibit the provision of VoIP services by competitors, but they are antithetical to the Commission's objective of facilitating the IP transition. Accordingly, ACA called upon the Commission to clarify that the interconnection obligations of Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act")[5] should continue to apply to the exchange of managed VoIP traffic. ACA added that once the Commission completes this critical action, when an appropriate forbearance petition is filed, it will have the opportunity to address the question of whether the larger ILECs continue to have market power. In these reply comments, ACA again focuses on VoIP interconnection issues and, based on further information and arguments made in the initial comments by other parties, submits the following:

I. VoIP interconnection trials would not be productive, and the Commission should not proceed to institute them.

While initial comments submitted by parties continued to show a divergence of positions on many IP interconnection issues, there was a consensus that the Commission's proposed VoIP interconnection trials would have little or no value and may even be counterproductive. AT&T, for instance, commented that the

> need for industry and technical standards…associated with VoIP interconnection…is being addressed…Accordingly, especially in view of its backwards-looking focus on the Commission's potential role managing the underlying agreements, the VoIP interconnection trial envisioned in the Public Notice would serve no useful purpose, nor would it yield any useful or relevant information regarding the transition.[6]

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5 *See* 47 U.S.C. §§ 251, 252. ACA notes that section 251(f) of the Act provides an exemption from section 251(c) for certain rural telephone companies under certain circumstances.

6 Comments of AT&T, GN Docket No. 13-5 at 21 (July 8, 2013).

Verizon shared a similar view, stating that it "is more efficient for parties to engage each other on a commercial basis without the distraction of an IP interconnection trial and the potential for proscriptive regulation."[7] Smaller incumbent providers also opposed the proposed trials, saying that "creating a 'trial' focused merely or even primarily on waiving this or that set of regulations would be simply 'putting the cart before the horse,' as only a full and complete understanding of the marketplace" can provide sufficient information upon which the Commission should base its actions.[8]

From the competitive provider perspective, numerous comments were filed in opposition to or about the weaknesses of VoIP interconnection trials:

> Sprint – "Much of the telecommunications industry already exchanges voice traffic in IP format…The proposed trials thus are duplicative of the knowledge and experience the industry has already compiled and will only result in costly delays in deploying all-IP networks."[9]
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> Cox Communications – "A trial, therefore, cannot produce any insight into the foundational concerns remedied by the Act and the current regulatory framework for interconnection because a trial is an artificial environment that cannot reflect the inequities in market power. Knowledge that a trial is intended to address these particular regulatory issues would give participating parties significant incentives to manipulate events to achieve desired regulatory results. Parties with significant negotiating power would choose not to exercise that power during the trial process so as to convince regulators that there is no need to limit their ability to impose favorable terms and conditions during later negotiations. This likely potential for a false positive result in the narrow context of a trial would not assist the Commission in understanding the real life application of the current regulatory framework for interconnection."[10]

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7 Comments of Verizon and Verizon Wireless, GN Docket No. 13-5 at 3 (July 8, 2013).

8 Comments of NTCA-The Rural Broadband Association, GN Docket No. 13-5 at 8 (July 8, 2013) ("NTCA Comments"). NTCA proposed that the Commission "undertake 'structured observations' of existing and soon-to-be-online IP interconnection and call routing efforts as a data gathering exercise."

9 Comments of Sprint Nextel Corporation, GN Docket No. 13-5 at 5 (July 8, 2013) ("Sprint Comments").

10 Comments of Cox Communications, Inc., GN Docket No. 13-5 at 5-6 (July 8, 2013).

Comptel – "A trial of negotiations *supervised* by the Commission by its nature provides no evidence as to behavior *without* regulation."[11]

Finally, a group of competitive local exchange carriers ("CLECs") echoed the position of the Commission's Technological Advisory Council's Working Group on VoIP Interconnection,[12] stating "that the primary obstacle to establishing VoIP interconnection agreements throughout the industry is the incumbent LECs' unwillingness to negotiate such agreements, *not* any technical or process issues related to VoIP interconnection."[13] In sum, there are sound policy reasons for the Commission to eschew – including because of the significant opposition to – trials to examine issues related to VoIP interconnection.[14]

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11 Comments of Comptel, GN Docket No. 13-5 at 6-7 (July 8, 2013) ("Comptel Comments").

12 *See* Federal Communications Commission Technological Advisory Council, *TAC Memo – VoIP Interconnection*, at 2 (Sept. 24, 2012) ("VoIP interconnection is growing in the USA due to efforts by MSOs [cable operators] and CLECs. This reinforces the point that deployment is technically feasible today but is largely being delayed due to commercial and policy considerations.").

13 Comments of Cbeyond et al., GN Docket No. 13-5 at 4 (July 8, 2013) ("Cbeyond Comments").

14 ACA notes that Cablevision supported trials for "large geographical areas" so long as "any negotiated agreements arrived at should remain in place even after the 'trial' period." Comments of Cablevision, GN Docket No. 13-5 at 4 (July 8, 2013). ACA appreciates Cablevision's intent to foster VoIP interconnection agreements by continuing their effect post-trial, but without assurances that any negotiated agreements will have sufficient duration post-trial and are non-discriminatory (and can be opted-into), its proposal is insufficient.

ACA also notes that there was little support for the trials proposed by AT&T in its petition. *See, e.g.*, Cbeyond Comments at 5 ("AT&T's entire proposal is based on the obviously incorrect and self-serving assumption that a change in electronics used to provide business broadband services somehow diminishes the incumbent LECs' market power over physical connections to end users and over interconnection."). If AT&T believes it no longer possess market power in markets, Section 10 of the Act provides it with a path for relief, including from the interconnection requirements of Sections 251 and 251, so long as it provides the requisite evidence. Instead, with its trials proposal, AT&T is effectively seeking the same type of deregulation but without providing any evidence. That would undermine the integrity of the Act. As such, the Commission should reject it.

II. To facilitate the IP transition, the Commission should act promptly to clarify that sections 251 and 252 are applicable to interconnection for the exchange of managed VoIP traffic.

There is no disagreement that the transition to all-IP networks depends upon providers entering into interconnection agreements to exchange traffic. In the *USF/ICC Transformation Order/FNPRM,*[15] the Commission began the process of laying the foundation for such an interconnection regime for VoIP traffic. Specifically, because "of the essential importance of interconnection of voice networks," the Commission directed that all carriers should "negotiate in response to requests for IP-to-IP interconnection for the exchange of voice traffic."[16] In doing so, the Commission affirmed that the duty to negotiate in good faith is not dependent "upon the network technology underlying the interconnection, whether TDM, IP, or otherwise."[17] Based on its direction and its belief the market forces were sufficient, the Commission expected "good faith negotiations to result in interconnection agreements between IP networks for the purpose of exchanging voice traffic."[18]

Unfortunately, as many commenters pointed out, the Commission's expectation that good faith requirements alone would drive interconnection agreements for VoIP traffic has not been met. A group of CLEC commenters, for instance, stated that the "available evidence demonstrates that the key obstacle to VoIP interconnection agreements is incumbent LECs' unwillingness to cooperate in negotiating such agreements," and then noted the specific refusals by AT&T and Verizon to negotiate.[19] Sprint too "has yet to obtain IP-to-IP interconnection for

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15 *See Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17663 (2011) ("*USF/ICC Transformation Order/FNPRM*").

16 *Id.*, ¶¶ 1010-1011.

17 *Id.*, ¶ 1011.

18 *Id.*

19 Cbeyond Comments at 12, n. 18.

voice traffic from any of the major ILECs."[20] T-Mobile, in its comments, stated that there is an "absence of any apparent [IP interconnection] agreements involving Regional Bell Operating Companies and other large ILECs" and that where negotiations have occurred, these ILECs "typically insist on a range of problematic items."[21] While this outcome is disappointing, it is not surprising given the incentives of the ILECs.

The reasons for the reluctance of the larger ILECs to enter into interconnection agreements for managed VoIP traffic are straightforward:

(1) Because the ILECs would incur significant costs to convert their networks from TDM to IP technology and because competing providers today incur the costs to convert their IP traffic to TDM when exchanging traffic with ILECs, ILECs lack the necessary financial incentive to move from TDM to IP interconnection,[22]

(2) Because ILECs (especially the larger ILECs) have much larger customer bases than competitive providers, they do not need (value) interconnection to the same extent as competitive providers,[23] and,

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20 Sprint Comments at 7.

21 Comments of T-Mobile USA, Inc. GN Docket No. 13-5 at 8 (July 8, 2013) ("T-Mobile Comments"). *See also* Comptel Comments at 15 ("Yet, eighteen months later [after the *USF/ICC Transformation Order/NPRM*] there is no new evidence of an ICA (or amendments to existing ones) being entered into by AT&T and Verizon that addresses VoIP interconnection.").

22 *See, e.g.,* Comptel Comments at 12-13 ("the major ILECs require competing carriers to convert traffic to legacy TDM-format prior to delivering it to the ILEC, even where the ILEC itself had deployed facilities that could transport the traffic in packet form on its own network. The result of this forced conversion is increased cost for unnecessary media gateways.").

23 *See, e.g., id.* at 3 ("Given that these carriers have far more voice subscribers than any other provider, the foundation of competition – interconnected networks that allow people to call each other regardless of each person's provider – is jeopardized without nondiscriminatory interconnection with these carriers.").

(3) Because the Commission has yet to clarify that the Act's interconnection requirements apply to managed VoIP traffic, ILECs can effectively avoid requests from competitive providers to enter into interconnection agreements for exchange of that traffic. As such, the Commission cannot "expect" that good faith negotiations alone will produce interconnection agreements for the exchange of VoIP traffic.

T-Mobile commented that it would be useful, as at least a partial mechanism to facilitate IP interconnection agreements, for the Commission to provide further definition about what constitutes good faith negotiations.[24] Based on the experience of its members and other MVPDs with the Commission's rules requiring MVPDs and television broadcasters to negotiate in good faith with respect to retransmission consent, which includes a list of seven clear and concise actions or practices that would constitute a violation, ACA submits that T-Mobile's proposal has no merit: it not only fails to address the key concern about the use of market power by larger ILECs to disadvantage competitors, but would prove counterproductive by diverting the Commission's attention away from addressing this problem. As the Commission found in the retransmission consent context, requiring parties to confer in good faith "does not compel either party to agree to a proposal or require the making of a concession."[25] In other words, while a requirement to enter into good faith negotiations may help negotiations begin, it does nothing to force parties to resolve their differences. This would be especially the case here, where the larger ILECs' have strong incentives that run counter to their entering into agreements with competitive providers for IP interconnection for voice service. Consequently, if the Commission

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24 *See* T-Mobile Comments at 9.

25 *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith and Exclusivity*, CS Docket No. 99-363, First Report and Order, FCC 00-99, ¶ 22 (Mar. 16, 2000) (quoting the Taft Hartley Act, National Labor Relations Act § 8(d), 29 U.S.C. § 158(d)).

wishes to expedite the IP transition, it should not be diverted by addressing the question of what constitutes good faith negotiations. Rather, it needs to clarify that ILECs have an enforceable duty to interconnect managed VoIP traffic.[26] ACA's position was shared by many commenting parties, including NTCA, which stated:

> The Commission should approach this issue, and that of the "IP Transition" in general, with the understanding that what is already occurring is an evolution of the Public Switched Telephone Network ("PSTN"), via a technology shift within communications networks nationwide. Facilitating this ongoing shift in an orderly manner that protects the objectives of consumer protection, universal service, and competition contained in the Communications Act should be the prism through which the Commission views each trial proposal as well as the data that it collects from observing ongoing trends.
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> In that regard, it would be premature for the Commission at this time to, *a priori*, jettison the framework contained in Sections 251 and 252 of the Communications Act. Contrary to the assertions of some, Sections 251 and 252 of the Communications Act are not impediments to negotiated agreements for the exchange of VoIP traffic. Indeed, these provisions provide carriers with the flexibility to pursue market solutions to interconnection issues, with a "regulatory backstop" to ensure that *consumers'* connectivity is not lost in the event that an agreement cannot be reached.[27]

In closing, over many years and many proceedings, the Commission has collected substantial evidence demonstrating that relying solely on the market to produce interconnection agreements for the exchange of VoIP traffic has not worked and that it has sufficient legal authority to remedy this problem.[28] Accordingly, ACA urges the Commission to act promptly to

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[26] The "regulatory backstop" provided by Sections 251 and 252 has been in effect for TDM traffic for over 15 years and thus is familiar to incumbent and competitive providers, as well as regulators. Moreover, in ACA's opinion, use of this backstop has generally been viewed to produce reasonable outcomes for parties. It is thus well-suited to act as an efficient oversight mechanism when required to settle managed VoIP interconnection disputes. The Commission should accordingly be skeptical of alarmist claims that these provisions will result in overly intrusive regulatory intervention.

[27] NTCA Comments at 5-6. *See also*, Cbeyond Comments at 4 ("the FCC should simply clarify that incumbent LECs must provide VoIP interconnection under Section 251(c)(2) of the Communications Act."); Comptel Comments at 8 ("It is already known that VoIP interconnection with the ILECs is possible now. What is needed is Commission confirmation that VoIP interconnection agreements are governed by Sections 251 and 252 of the Act.")

[28] *See e.g.* Reply Comments of TW Telecom Inc. et al., WC Docket No. 11-119 at 10-28 (Aug. 30, 2011).

affirm that regardless of technology all interconnection for the exchange of traffic is governed by Sections 251 and 252 of the Act. Then, if a forbearance petition is filed, it can examine the market for VoIP interconnection to determine whether the ILECs continue to have market power and forbear if it finds that such market power does not exist. ACA submits this "regular order" approach for examining the legal and regulatory questions surrounding VoIP interconnection will further the Commission's goal of expediting the IP transition.

Respectfully submitted,

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